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| APPLICATION NO.   | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|---|-------------|----------------------|---------------------|------------------|
| 09/936,806  | 09/17/2001  | Amir Loshakove       | 088/02376           | 9502             |
| 7590  | 04/06/2004  |                      | EXAMINER            | O CONNOR, CARY E |
| William H Dippert<br>Cowan Liebowitz and Latman<br>1133 Avenue of the Americas<br>New York, NY 10036-6799 |             |                      | ART UNIT            | PAPER NUMBER     |
|   |             |                      | 3732                | 16               |
| DATE MAILED: 04/06/2004   |             |                      |                     |                  |

Please find below and/or attached an Office communication concerning this application or proceeding.

|                             |                  |                 |
|-----------------------------|------------------|-----------------|
| <b>Offic Action Summary</b> | Applicati n No.  | Applicant(s)    |
|                             | 09/936,806       | LOSHAKOVE ET AL |
|                             | Examin r         | Art Unit        |
|                             | Cary E. O'Connor | 3732            |

— The MAILING DATE of this communication app ars on the cover sheet with the correspondence address —

#### Period f r R ply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
  - If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
  - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
  - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 20 January 2004.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-4,6-22 and 74-159 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) 14-22,78-90,93,97-120,145-151,158 and 159 is/are allowed.
- 6) Claim(s) 1,2,8,9,11-13,91,92,94-96,121,123-125,127-130,142,152 and 157 is/are rejected.
- 7) Claim(s) 3,4,6,7,10,122,126,131-141 and 153-156 is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All    b) Some \* c) None of:
1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachm nt(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | Paper No(s)/Mail Date. _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
|  | 6) <input type="checkbox"/> Other: _____                                    |

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1, 2, 8-13, 74-76, 94-96, 121, 123-125, 127-130, 142, 152 and 157 are rejected under 35 U.S.C. 102(e) as being anticipated by Solem (6,179,848). Solem shows a anastomotic connector comprising a radially thin collar section 11, and a separate spike section 17 comprising a plurality of spikes 21, wherein each of the spikes are adapted to transfix a graft 6 and penetrate a target vessel 8. As to claims 8-10, note the plurality of flange elements 14 which define apertures 13 for the spike elements to pass through. As to claim 11, note that the collar section is cylindrical. As to claim 12, note that Figures 6a-6c show the collar section adapted to form a perpendicular anastomosis. As to claim 13, the collar section could inherently be “adapted to” form an oblique anastomosis. As to claims 2 and 121, note the plurality of lock elements 22 that limit the movement of the spikes relative to the apertures. As to

claims 123-125, the lock elements allow some axial motion of the spikes (in one direction) relative to the apertures.

Claims 91 and 92 are rejected under 35 U.S.C. 102(e) as being anticipated by Grudem et al (6,511,491). Grudem shows a kit for a bypass procedure comprising at least one graft 104 having anastomosis connectors 12, 10 embedded in the two ends of the graft, and at least one guide wire 160 attached to one end of the graft.

***Allowable Subject Matter***

Claims 3, 4, 6, 7, 10, 122, 126, 131-141, 153-156 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claims 14-22, 78-90, 93, 97-120, 145-151, 158 and 159 are allowed.

***Response to Arguments***

Applicant's arguments with respect to claims 1 and 14 have been considered but are moot in view of the new ground(s) of rejection. Note that although claims 1 and 14, as now amended, were indicated as "allowable" in the IPER, the references now applied are intervening references (patented after the international filing date) which were not considered when the IPER was prepared. However, they are considered to be proper references under 35 USC 102(e) because the effective filing dates (Jan. 12, 1999 for the Solem reference and Mar. 9, 1999 for the Grudem reference) are prior to the effective filing dates of the claimed subject matter.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Cary E. O'Connor whose telephone number is 703-308-2701. The examiner can normally be reached on M-F 7:00am to 4:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kevin P. Shaver can be reached on 703-308-2582. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9306 for regular communications and 703-872-9306 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0858.

*Cary E. O'Connor*  
Cary E. O'Connor  
Primary Examiner  
Art Unit 3732

ceo  
March 30, 2004